

December 9, 2010

Via Electronic Mail to MMata@waterboards.ca.gov

Michelle Mata

San Diego Regional Water Quality Control Board

9174 Sky Park Court, Suite 100

San Diego, CA 92123-4340

**Re: Tentative Order No. R9-2010-0124, NPDES Permit No. CAG999002**

*General Waste Discharge Requirements for Discharges Associated With Public Displays of Fireworks to Surface Waters in the San Diego Region*

Dear Ms. Mata and Regional Board members:

San Diego Coastkeeper respectfully submits the following comments on the Regional Water Quality Control Board's proposed general permit for discharges associated with the detonation of fireworks over surface waters in the San Diego Region. Fireworks pose a threat to the region's water quality because they contain harmful chemicals and other pollutants, which are released when detonated over water. The Clean Water Act prohibits discharges of pollutants from point sources into waters of the United States without a permit. 33 U.S.C. § 1311(a). San Diego Coastkeeper supports a strong permit—including monitoring provisions to ensure water quality is protected—for all fireworks discharges over or near waterways.

**I. The Clean Water Act Regulates the Discharge of Fireworks into Waters of the United States.**

Because fireworks displays occurring over or adjacent to surface water release harmful chemical and solid wastes from a discrete conveyance into those waters, persons seeking to discharge fireworks over or near waterways must first obtain a National Pollutant Discharge Elimination Systems ("NPDES") permit under the Clean Water Act. Section 303(a) of the Clean Water Act prohibits the discharge of any pollutant from a point source into waters of the United States without first acquiring a permit. *See* 33 U.S.C. § 1311(a).

**1. Fireworks Are a "Pollutant" Regulated Under the Clean Water Act.**

The Clean Water Act defines "pollutants" to include solid waste, chemical wastes, munitions, and municipal waste. *See* 33 U.S.C. § 1362(6). Fireworks are a pollutant because they are chemical waste; they typically contain chemicals such as aluminum, magnesium,

strontium, barium, sodium, potassium, iron, copper, sulfate, nitrate, and perchlorate. *See* California Reg'l Water Quality Control Bd., Addendum No. 1 to Order No. R9-2005-0091, NPDES No. CA0107336 for the Discharge of Waste from SeaWorld Aerial Fireworks Displays to Mission Bay, San Diego. Many of these chemicals pose serious risks to human health and wildlife. *See* N. Irving Sax & Richard J. Lewis, Sr., *Dangerous Properties of Industrial Materials* (Van Nostrand Reinhold, New York, 1989, 7th ed.); *see also* Richard T. Wilkin, Dennis D. Fine, and Nicole G. Burnett, *Perchlorate Behavior in a Municipal Lake Following Fireworks Displays*, 41 *Environmental Science & Technology* at 3966 (2007).

Fireworks are also a pollutant because they create solid waste. The cardboard casings, fuses and wires that comprise the fireworks may fall into water as trash after the munitions explode. California Reg'l Water Quality Control Bd. Order No. R9-2005-0091, NPDES No. CA0107336 for the Discharge of Waste from SeaWorld Aerial Fireworks Displays to Mission Bay, San Diego.

Furthermore, fireworks fired by, or on behalf of, a municipality constitute "municipal waste." And because fireworks are shot into the air and explode, they are "munitions" regulated as a pollutant under the Act. Fireworks, therefore, fit at least four definitions of "pollutant" regulated under the Clean Water Act.

## **2. Fireworks Are Launched from a Point Source.**

The Clean Water Act defines "point source" as "any discernible, confined and discrete conveyance...from which pollutants are or may be discharged." 33 U.S.C. § 1362. Any discernable point of land or floating vessel discharging pollutants constitutes a point source under the Clean Water Act. Because fireworks are launched from a ship, boat, or discrete point on land, the detonation of fireworks is regulated under the Clean Water Act.

## **3. Any Fireworks Displays Over or Near Water Require a Permit.**

The Clean Water Act regulates discharges of pollutants from a point source into waters of the United States. The term "waters of the United States" is used to describe most surface waters within the United States, including any waterway used for navigation, rivers, streams, wetlands, and waters affected by the tide. *See* 40 C.F.R. § 230.3(s). Coastal waters and bays such as San Diego Bay and Mission Bay are jurisdictional waters under the Clean Water Act. Therefore, any fireworks discharge over or near jurisdictional waters must be covered by an NPDES permit.

## **II. The Regional Board Has Acknowledged that the Clean Water Act Applies to Firework Displays over Surface Waters.**

In 2007, the Regional Board issued a NPDES permit to Anheuser-Busch Inc., the owners of SeaWorld San Diego, for the discharge of fireworks-related pollutants. *See* California Reg'l Water Quality Control Bd. Order No. R9-2005-0091, NPDES No. CA0107336 for the Discharge of Waste from SeaWorld Aerial Fireworks Displays to Mission Bay, San Diego. The SeaWorld permit acknowledges that the fireworks release pollutants that adversely impact Mission Bay. *Id.* The permit requires SeaWorld to regularly monitor pollutant levels in both water and sediment in the vicinity of the fireworks displays. *Id.*

Water quality monitoring data collected by SeaWorld in its fireworks deposition zone show elevated chemical concentrations. *See SeaWorld Aerial Fireworks Displays 2008 Annual Report Executive Summary* (March 2009) and *SeaWorld Aerial Fireworks Displays 2009 Annual Report and 2010 Work Plan* (January 2010). These elevated pollutant levels can be attributed to SeaWorld's fireworks displays. *Id.* The SeaWorld fireworks permit illustrates that the all fireworks detonation over or adjacent to surface waters falls within the ambit of the Clean Water Act and requires a permit.

## **III. San Diego Coastkeeper Supports a Protective Discharge Permit Requiring Best Management Practices and Water Quality and Sediment Monitoring.**

San Diego Coastkeeper applauds the efforts of the Regional Board to prepare a NPDES general permit for fireworks displays over or adjacent to the region's surface waters. San Diego Coastkeeper appreciates that fireworks shows are a popular way to celebrate holidays such as Independence Day and New Year's Eve, and Coastkeeper does *not* seek to eliminate all fireworks in the region. On the contrary, San Diego Coastkeeper seeks a permitting process that will ensure that fireworks displays over jurisdictional waters do not threaten water quality and that all potential dischargers fully comply with the law.

Coastkeeper urges the Regional Board to resist the pressures of the fireworks purveyors and local politicians to weaken the permit conditions or to eliminate the permit altogether.

Michelle Mata, San Diego Regional Water Quality Control Board  
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Instead, we urge this Board to issue its general permit for fireworks-related discharges into the region's surface waters. Coastkeeper supports protective general permit provisions requiring the implementation of best management practices and mandatory water and sediment monitoring before and after the displays. Thank you for your attention to this matter.

Sincerely,



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San Diego Coastkeeper



Jill Witkowski  
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San Diego Coastkeeper